

³ See 47 C.F.R. §§ 51.703(b) and 51.709(b).

II. DISCUSSION

A. Qwest May Lawfully Charge Mountain for Transiting Traffic.

2. Mountain first contends that the Bureau erred in finding that Qwest may lawfully charge Mountain for a portion of the facilities used for the transport of transiting traffic.⁴ As it did in its complaint, Mountain argues that Qwest is “double recovering” for those facilities, that the Commission’s rules and orders prohibit such charges, and that the Commission erred in the *TSR Wireless Order*⁵ in allowing LECs to charge for transiting traffic.⁶ The Bureau considered and rejected all of these allegations in the *Mountain Order*.⁷ Moreover, the Commission has subsequently reaffirmed its determination that a LEC may lawfully charge a CMRS carrier for the facilities used in transporting transiting traffic.⁸ In addition, Mountain again fails to support its double recovery allegations with any evidence that Qwest already recovers for the facilities in question from some other source.⁹ Thus, Mountain provides no basis for us to overturn the Bureau’s decision.

3. Further, Mountain argues that the Bureau’s order is flawed because it relies on a purportedly incorrect finding by the Commission in the *Texcom Order*. According to Mountain, the Commission wrongly concluded in the *Texcom Order* that the interconnecting LEC was the terminating carrier with respect to call traffic sent to a CMRS carrier. Mountain argues that the Bureau relied on this incorrect conclusion in determining that Mountain, rather than Qwest, is responsible for the cost of facilities used to deliver transiting traffic to Mountain.¹⁰ Mountain’s reading of the *Texcom Order* is incorrect. The Commission in the *Texcom Order* stated that the

⁴ See *Mountain Petition* at 3-6, ¶¶ 6-10; 20-22, ¶¶ 34-36; 22, ¶ 37; 23, ¶¶ 38-39; 24, ¶¶ 40. “Transiting traffic” refers to calls made to Mountain’s customers originating from customers of carriers other than Qwest. *Mountain Order*, 15 FCC Rcd at 11911, ¶ 4.

⁵ *TSR Wireless, LLC v. U S West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11177, ¶ 19 n.70 (2000) (“*TSR Wireless Order*”), *aff’d sub. nom., Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

⁶ See *Mountain Petition* at 3-6, ¶¶ 6-10 (addressing reciprocal compensation arguments); 20-22, ¶¶ 34-36 (addressing access charge arguments).

⁷ See *Mountain Order*, 17 FCC Rcd at 2095, ¶ 10.

⁸ *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, Order on Reconsideration, FCC 02-96 (rel. Mar. 27, 2002) (“*Texcom Reconsideration Order*”) at 2-3, ¶¶ 3-6. See also *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, Memorandum Opinion and Order, 16 FCC Rcd 21493, 21495-7, ¶¶ 5-13 (2002) (“*Texcom Order*”).

⁹ See *Mountain Petition* at 3-6, ¶¶ 6-10; 20-22, ¶¶ 34-36.

¹⁰ *Mountain Petition* at 4-5, ¶¶ 6-8. Mountain asserts that 47 C.F.R. § 51.701(c) and the Bureau’s previous orders require a LEC to provide the transport for all call traffic, including transiting traffic, because the equipment that is used in this transport function up to the point of interconnection is part of the LEC’s network. *Id.* at 5-6, ¶¶ 9-10.

CMRS carrier, not the interconnecting LEC, was the terminating carrier.¹¹ The Commission subsequently confirmed this point in the *Texcom Reconsideration Order*.¹² Accordingly, the Commission concluded that the interconnecting LEC, *because* it is not a terminating carrier, could not recover reciprocal compensation payments for transiting traffic, and the interconnecting LEC could charge the CMRS carrier for the transport of such traffic.¹³ Thus, Mountain's reliance on an incorrect reading of the *Texcom Order* does not justify overturning the Bureau's decision.

B. Qwest May Lawfully Charge Mountain for Wide Area Calling.

4. Mountain claims that the Bureau erred in its determination that Qwest may lawfully charge Mountain for wide area calling.¹⁴ The Bureau's order stated that the wide area calling arrangement at issue involves Qwest's provision of dedicated toll facilities to Mountain that connect the Direct Inward Dialing ("DID") numbers that Mountain has obtained in each of Qwest's local calling areas to Mountain's interconnection point in another local calling area.¹⁵ The Bureau found that this enabled the calling customer in each of Qwest's local calling areas to dial a local number to reach a Mountain subscriber and avoid incurring toll charges.¹⁶ Mountain first disputes the Bureau's finding that the interconnection arrangement it has obtained from Qwest constitutes wide area calling.¹⁷ Mountain maintains that wide area calling is limited to a reverse billing arrangement¹⁸ and does not encompass the provision of facilities.¹⁹ In addition, Mountain denies that the T-1 facilities it obtains from Qwest to connect the DID numbers used by Mountain's customers in each of Qwest's local calling areas to Mountain's interconnection point are "dedicated toll facilities" because those facilities do not carry "toll" traffic.²⁰ Mountain

¹¹ *Texcom Order*, 16 FCC Rcd at 21496, ¶ 10. *See also Texcom Reconsideration Order* at 2-3, ¶ 4 (stating that GTE North is not a terminating carrier); *TSR Wireless Order*, 15 FCC Rcd at 11180-81, ¶ 24 (finding that paging carriers terminate calls within the meaning of section 51.701(d)).

¹² *Texcom Reconsideration Order* at 2-3, ¶ 4.

¹³ *Texcom Reconsideration Order* at 2-3, ¶ 4. Further, the Commission and the Bureau have made clear that a terminating carrier may seek reimbursement of these costs from originating carriers through reciprocal compensation. *Id.*; *Mountain Order*, 17 FCC Rcd at 2095, ¶ 10 n.30; *Metrocall, Inc. v. Concord Telephone Co.*, Memorandum Opinion and Order, 17 FCC Rcd 2252, 2257, ¶11 n.41 (2002).

¹⁴ *See Mountain Petition* at 7-20, ¶¶ 11-33.

¹⁵ *Mountain Order*, 17 FCC Rcd at 2092, ¶ 3.

¹⁶ *Id.*

¹⁷ *Mountain Petition*, at 7-14, ¶¶ 11-23. Mountain's contention that it does not obtain interconnection services from Qwest is belied by the obvious fact that it would not be able to receive any calls on its network from Qwest's network without Qwest's provision of interconnection. *Id.* at 3, ¶ 3.

¹⁸ A reverse billing arrangement is one in which the LEC assesses a per minute usage charge to the CMRS carrier, in place of a toll charge to the originator of the call. *See TSR Wireless Order*, 15 FCC Rcd at 11169, ¶ 6 n.6.

¹⁹ *See Mountain Petition* at 7-14, ¶¶ 11-23.

²⁰ *Id.* at 8, ¶ 13; 11, ¶ 18.

maintains that the T-1 lines provisioned by Qwest are simply facilities required to effectuate a single point of interconnection within a Local Access and Transport Area (“LATA”), for which Qwest is responsible pursuant to section 51.703(b) of the Commission’s rules.²¹ Mountain also contends that the Bureau’s ruling is inconsistent with the Commission’s *TSR Wireless Order*, because the network configuration discussed in the *TSR Wireless Order* is identical to Mountain’s arrangement with Qwest.²²

5. We are not persuaded by Mountain’s arguments. As an initial matter, Mountain’s understanding of wide area calling is incorrect. As the Commission pointed out in the *TSR Wireless Order*, wide area calling allows a paging carrier to subsidize the cost of calls from a LEC’s customers to the paging carrier’s customers, when the LEC must complete those calls by transporting the calls from one local calling area to another.²³ A reverse billing arrangement is *only one of several types* of wide area calling services, and the T-1 lines that constitute the “dedicated toll facilities” in Mountain’s interconnection arrangement with Qwest are referred to as such because their sole function is to route the DID numbers to Mountain’s point of interconnection in Pueblo.²⁴ By establishing a point of interconnection in Pueblo, obtaining DID numbers that reside in Qwest’s central offices in Pueblo, Walsenberg, and Colorado Springs, and then requesting T-1 lines from Qwest to connect those DID numbers to its point of interconnection in Pueblo, Mountain ensures that calls to the DID numbers in each of the relevant Qwest central offices appear local and involve no toll charges to callers in those areas.²⁵ By configuring its interconnection arrangement in this manner, Mountain prevents Qwest from charging its customers for what would ordinarily be toll calls to access Mountain’s network. Accordingly, Mountain has obtained a wide area calling service for which it must compensate Qwest. Mountain’s position that the lack of a written agreement between the parties indicates that no wide area calling arrangement with Qwest exists is meritless.²⁶ Mountain’s ordering and acceptance of the T-1 facilities from a tariff that create a wide area calling arrangement constitutes an agreement between the parties regarding the provisioning of this service.²⁷

6. Mountain is correct that the network configuration discussed in the *TSR Wireless Order* is similar to Mountain’s arrangement with Qwest.²⁸ Contrary to Mountain’s contentions,

²¹ *Id.* at 11-14, ¶¶ 19-23.

²¹ *Id.* at 11, ¶ 19.

²² *Id.* at 16-18, ¶¶ 26-28.

²³ *TSR Wireless Order*, 15 FCC Rcd at 11177, ¶¶ 30-31; *Mountain Order*, 17 FCC Rcd at 2092, ¶ 3.

²⁴ *Mountain Order*, 17 FCC Rcd at 2092, ¶ 3.

²⁵ See Qwest Corporation’s Opposition to Mountain’s Petition for Reconsideration of Memorandum Opinion and Order, File No. EB-00-MD-017 (filed Mar. 18, 2002) at 6.

²⁶ See *Mountain Petition* at 18-20, ¶¶ 29-33.

²⁷ *Mountain Order*, 17 FCC Rcd at 2097, ¶ 13.

²⁸ See *TSR Wireless Order*, 15 FCC Rcd at 11177, ¶ 31.

however, the *Mountain Order* did not alter the Commission's position in the *TSR Wireless Order* that, pursuant to section 51.701(b) of the Commission's rules, a LEC may not charge a CMRS carrier for the delivery of LEC-originated traffic that originates and terminates within the same Major Trading Area ("MTA").²⁹ The *Mountain Order* merely reiterated that a LEC is entitled to charge its *own subscribers* for intraLATA toll calls on its network that terminate within the same MTA, and that the LEC may charge a CMRS carrier for services that are not necessary to effectuate interconnection.³⁰ Mountain's wide area calling arrangement with Qwest is not necessary to effectuate interconnection.³¹ In fact, Mountain is free to cancel both the DID numbers and the dedicated toll facilities connecting those DID numbers to Mountain's single point of interconnection, and instead permit Qwest to bill its own end users for toll calls to Mountain's point of interconnection. Indeed, that is precisely the choice the Commission contemplated in addressing the network configuration at issue in the *TSR Wireless Order*. Moreover, because Mountain's network arrangement is not necessary for interconnection, Qwest's charges do not implicate the good faith negotiations obligations under section 251(c)(1) of the Act.³² Thus, Qwest's assessment of a flat monthly rate for the T-1 lines Mountain has leased to effectuate wide area calling is permissible.

7. Lastly, we reject Mountain's claim that the Bureau's wide area calling determination allows Qwest to double recover for the facilities used to deliver traffic to Mountain, because Qwest already receives compensation for these facilities from Qwest's subscribers and third party carriers that originate traffic onto Qwest's network.³³ As we explained in the transiting traffic context, Qwest is not a terminating carrier and cannot recover its costs for this portion of the network through reciprocal compensation charges.³⁴ Moreover, Mountain fails to provide any evidence that Qwest is already recovering its transport costs for the facilities in question from some other source.

²⁹ *Mountain Order*, 17 FCC Rcd at 2096, ¶11; *TSR Wireless Order*, 15 FCC Rcd at 11177, ¶ 31.

³⁰ *Mountain Order*, 17 FCC Rcd at 2096, ¶11; *TSR Wireless Order*, 15 FCC Rcd at 11177, ¶¶ 30-31.

³¹ *Mountain Order*, 17 FCC Rcd at 2097, ¶13; *TSR Wireless Order*, 15 FCC Rcd at 11177, ¶ 31.

³² *See Mountain Petition* at 18-20, ¶¶ 29-33. 47 U.S.C. § 251(c)(1).

³³ *See Mountain Petition* at 14-16, ¶¶ 24-25.

³⁴ *See supra* ¶ 3.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 5(c), 208, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 208, 405, and section 1.106 of our rules, 47 C.F.R. § 1.106, that the “Petition for Reconsideration” filed by Mountain Communications IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary